



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/153379

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 06, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$1,484 from the Petitioner for the period of December 1, 2012 – October 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 2, 2012, Petitioner submitted a Six Month Report Form (SMRF). Petitioner reported that she no longer works at Milwaukee Institute for Art and Design (MIAD). On July 27, 2012, the

agency received verification from MIAD that Petitioner was no longer working there. On July 30, 2012, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits of \$200/month effective July 1, 2012. The agency based its calculation of FS benefits on \$0 income for Petitioner's household. The notice informed the Petitioner that if her total monthly gross income exceeds \$1,180, she must report it to the agency by the 10th day of the next month.

3. On September 10, 2012, the agency issued a Notice of Decision to the Petitioner informing her that she would continue receiving FS benefits of \$200/month based on \$0 income for her household. The notice also informed the Petitioner that if her total monthly gross income exceeds \$1,211, she must report it to the agency by the 10th day of the next month.
4. On December 4, 2012, the agency received an employer verification from MIAD indicating Petitioner earns a gross wage of \$1,222/month. On December 12, 2012, Petitioner's Six Month Report Form (SMRF) was processed.
5. On June 26, 2013, the agency received an employer verification from MIAD indicating Petitioner earns a gross wage of \$1,888.88/month.
6. On July 5, 2013, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits of \$143 for July, 2013 and \$153/month effective August 1, 2013. The notice indicates the agency calculated income of \$180/week in unemployment compensation benefits. The notice also informed the Petitioner that if her total monthly gross income exceeds \$1,211, she must report it to the agency by the 10th day of the next month. The agency further noted that Petitioner's 1st quarter wages from the state wage record did not match with Petitioner's reported wages and referred the matter for investigation of possible overpayment.
7. On October 7, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be reduced from \$156/month to \$145/month effective November 1, 2013. The notice indicates the agency calculated income of \$180/week in unemployment compensation benefits. The notice also informed the Petitioner that if her total monthly gross income exceeds \$1,245, she must report it to the agency by the 10th day of the next month.
8. On October 7, 2013, the agency received an employer verification of the Petitioner's wages for the period of October, 2012 – September, 2013. The Petitioner's gross wages were as follows:

October, 2012	\$1,222.22
November, 2012	\$1,222.22
December, 2012	\$1,222.22
January, 2013	\$1,888.88
February, 2013	\$1,888.88
March, 2013	\$1,888.88
April, 2013	\$1,888.88
May, 2013	\$ 944.44
June, 2013	\$0
July, 2013	\$0
August, 2013	\$1,458.33 (one pay period)
September, 2013	\$1,458.33 (one pay period)

7. The Petitioner received unemployment compensation benefits of \$540 on June 27, 2013 (for 3 weeks in June), \$180 on July 2, 2013 and \$148 on July 18, 2013.

8. The Petitioner received FS benefits of \$200/month from December, 2012 – June, 2013, \$143 in FS benefits for July, 2013, \$153 in FS benefits for August and September, 2013 and \$156 in FS benefits for October, 2013.
9. On October 10, 2013, the agency issued a Notification of FS Overissuance to the Petitioner informing her that the agency intends to recover an overpayment of \$1,484 for the period of December 1, 2012 – October 31, 2013.
10. Petitioner's household size is one. She has rent expense of \$600/month plus utilities.
11. On November 7, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also, FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. Id.

"Discovery" is "the date that the ESS [agency] became aware of the potential that an overissuance may exist." BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012).

In this case, the agency became aware of a potential for an overissuance in July, 2013. The agency alleges the overpayment is due to client error in not reporting income that exceeded the reporting requirement. Here, the alleged overpayment sought by the agency started nine months prior to discovery so either recovery method is appropriate under the law.

In a fair hearing concerning the correctness of an overpayment of benefits, including the Food Share program, the burden of proof is on the agency. The agency must demonstrate a prima facie case establishing by the preponderance of the evidence that the overpayment occurred as determined, and must be recovered.

Food units that do not have Elderly, Blind or Disabled (EBD) members are required to report changes in income if their total monthly gross income exceeds 130% of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL. FoodShare Wisconsin Handbook, 6.1.1.2.

The agency notified the Petitioner in September, 2012 that if her monthly gross income exceeded \$1,211 (130% FPL for a household of one), she was required to report her increased income to the agency by the 10th day of the next month. In October, 2012, the Petitioner's gross income was \$1,222. Therefore, she was required to report her increased income to the agency by November 10, 2012. The Petitioner concedes she did not report this increased income to the agency at that time. Her income in November, 2012 also exceeded the income limit for reporting.

The agency did receive an employment verification with the Petitioner's updated earned income in December, 2012. The verification indicated Petitioner's gross monthly earned income was \$1,222/month. However, in January, 2013, the Petitioner's income increased again to \$1,888.88/month. The Petitioner did not report this increase in income by the 10th day of the next month. The agency became aware of the

change in income when it received an employment verification form in June, 2013 as part of the Petitioner's six month renewal process.

The Petitioner did not dispute that she did not report the changes in her income by the 10th day of the next month after the changes occurred. She testified that she reported the changes at her six month review and believed this was when she was required to report those changes. However, the notices she received informed her of the need to report the changes by the next month.

The Petitioner also testified that she did not use her FS benefits for three months. However, those benefits were issued and available for her to use up to one year from the date of issuance. If she no longer wished to receive FS benefits, it was her responsibility to notify the agency.

As a result of the Petitioner's failure to report her changes in income as required, she received an overissuance of FS benefits from December 1, 2012 – October 31, 2013. I reviewed the agency's calculation of the overissuance. The Petitioner did not dispute the wages budgeted by the agency in determining the overpayment. I note that the agency did not take a full overpayment but did properly determine the amount of FS benefits for which the Petitioner was eligible during each month of the overpayment period and seeks to recover only that amount for which the Petitioner was overpaid based on her actual income. Based on the evidence, I conclude the agency properly seeks to recover an overissuance of \$1,484.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits in the amount of \$1,484 from the Petitioner for the period of December 1, 2012 – October 31, 2013.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

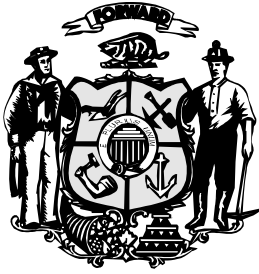
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 28th day of February, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 28, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability